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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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Federal Communications Commission  
Office of the Secretary  
MB Docket No. 04-191

In the Matter of )

San Francisco Unified School District )

For Renewal of License for Station KALW(FM), )  
San Francisco, California )

Facility ID No. 58830

File No. BRED-19970801YA

To: Chief Administrative Law Judge  
Richard L. Sippel

**ENFORCEMENT BUREAU'S**  
**REPLY TO SFUSD'S OPPOSITION TO MOTION TO ENLARGE ISSUES**

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## SUMMARY

For the reasons explained in the Bureau's Motion and in its Reply, substantial and material questions of fact exist as to whether one or more of the licensee's employees lacked candor or misrepresented facts during the discovery conducted in the captioned proceeding. The contentions of the San Francisco Unified School District ("SFUSD") in its Opposition that its employees have been forthright during discovery,<sup>1</sup> that, "time after time, the licensee and deponents have demonstrated their veracity by making admissions against interest,"<sup>2</sup> are without merit. As explained in the Reply, it appears that, during her deposition, Station KALW(FM) General Manager Nicole Sawaya deceptively failed to disclose her own review of the situation regarding the station's public inspection file. That review led her to conclude that SFUSD should report to the Mass Media Bureau that the station did not have all required ownership reports and issues/programs lists in its public file on August 1, 1997, and she so reported to SFUSD's counsel in a memorandum dated March 8, 2001. Nevertheless, by letter filed April 6, 2001, SFUSD represented to the Commission that all required ownership reports and issues/programs lists were indeed in the station's public inspection file on August 1, 1997. Contrary to SFUSD's argument that Ms. Sawaya had no motive for failing to disclose her involvement in reviewing the public file in order to respond to the Mass Media Bureau is an understandable desire either to preserve her employment at the station, and/or to protect the employment of her colleague, William Helgeson. Addition of the requested issue is warranted.

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<sup>1</sup> Opposition at 7.

<sup>2</sup> *Id.*

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To: Chief Administrative Law Judge		
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**ENFORCEMENT BUREAU'S  
REPLY TO SFUSD'S OPPOSITION TO MOTION TO ENLARGE ISSUES**

**BACKGROUND**

1. On March 2, 2005, the San Francisco Unified School District ("SFUSD") filed its "Opposition to Enforcement Bureau's Motion to Enlarge Issues" ("Opposition"). The Enforcement Bureau (the "Bureau") hereby submits its Reply.<sup>3</sup> For the following reasons, the Bureau submits that the Opposition underscores the necessity of enlarging the issues in the captioned proceeding, as the Bureau has requested.

2. The Bureau has moved to enlarge the issues in the captioned proceeding to add the following issue:

To determine whether San Francisco Unified School District made misrepresentations of fact and/or lacked candor during discovery.<sup>4</sup>

3. During discovery, the Bureau deposed several individuals, including current Station KALW(FM) General Manager Nicole Sawaya. One of the Bureau's objectives in

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<sup>3</sup> 47 C.F.R. § 1.229. This Reply is timely filed. *See Order*, FCC 05M-11 (rel. Mar. 8, 2005).

<sup>4</sup> Enforcement Bureau's Motion to Enlarge Issues (Feb. 5, 2005) ("Motion").

deposing her was to determine which SFUSD employees or agents had provided information that could have served as the basis for SFUSD's response to the Mass Media Bureau's February 5, 2001, letter of inquiry, what that information was, how that information was ascertained, and by whom. In pertinent part, the Mass Media Bureau had sought answers to the following:

1. On August 1, 1997, . . . did the KALW(FM) public inspection file contain all of the ownership and supplemental ownership reports required to be filed . . . ? If the answer is "no," detail any omission or deficiency.
2. On August 1, 1997, did the KALW(FM) public inspection file contain all of the issues/programs lists required? If the answer is "no," detail any omission or deficiency....
5. As of the date of this letter, is the KALW(FM) public inspection file now complete?<sup>5</sup>

By letter dated March 6, 2001, SFUSD requested (and ultimately received from the Mass Media Bureau) a 30-day extension of the deadline to file its response to the LOI. SFUSD stated the extension was necessary "[i]n order to provide complete and accurate responses . . . . KALW, which has a small staff, recently hired a new general manager, who began work on March 1, 2001. SFUSD wishes to involve this new general manager in all matters relating to KALW's 1997 license renewal, including response to your letter of inquiry."<sup>6</sup> Ms. Sawaya, the aforementioned new General Manager, was provided a copy

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<sup>5</sup> Letter from Linda Blair, Chief, Audio Services Division, Mass Media Bureau, to Ernest T. Sanchez, Esq., dated March 6, 2001, at 2 (the "LOI").

<sup>6</sup> Letter from Ernest T. Sanchez, Esq., to Linda Blair, Chief, Audio Services Division, Mass Media Bureau, dated March 6, 2001. *See also HDO* at 13333, ¶ 37, n.37.

of the extension request, which included a copy of the February 5 LOI. On April 6, 2001, SFUSD filed its response to the LOI.<sup>7</sup>

4. By Memorandum dated March 8, 2001, Ms. Sawaya provided SFUSD's then-counsel, Ernest T. Sanchez, Esquire, with her responses to the LOI, which was apparently based on her review of the station's public inspection file and on conversations with various station employees.<sup>8</sup> The Sawaya Memorandum opined that SFUSD should answer "No" to the LOI's questions 1 and 2, above.<sup>9</sup> With respect to LOI question 5, Ms. Sawaya reported to SFUSD's counsel that the station ownership reports were now complete and current, that issues/programs listings were current, and that "back listings are in the process of being completed to the best of our ability."<sup>10</sup> SFUSD produced the Sawaya Memorandum to the Bureau on February 2, 2005, more than four months after she had been deposed.

### **DEPOSITION TESTIMONY**

5. The Bureau deposed Ms. Sawaya on September 28, 2004. At that time, Ms. Sawaya recalled numerous details of the events surrounding her hiring by SFUSD and her first month of employment at the station.<sup>11</sup> For example, she explained that Station

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<sup>7</sup> See Letter from Ernest T. Sanchez, Esq., to Linda Blair, Chief, Audio Services Division, Mass Media Bureau, dated April 5, 2001, on which Ms. Sawaya was noted as having received a copy (the "LOI Response").

<sup>8</sup> March 8, 2001, memorandum from Nicole Sawaya to Ernie Sanchez Re: KALW & FCC letter dated: 2.5.01 – Reference: 1800B3 ("the Sawaya Memorandum").

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ms. Sawaya readily recalled details of her employment history from 1991 through 2001. Among other things, she explained that she had been the station manager at public radio station KZYYX, Filo, Mendocino County, California, for six months in 1995 [Tr. 356, lines 12-17, Tr. 358, lines 7-15], where she was responsible for the station's issues/program lists [Tr. 359, lines 13-21, Tr. 360, lines 7-13]. She also stated that she had been the GM for Station KPFA from January 1998 until March 1999, when her

KALW(FM) Operations Manager Bill Helgeson contacted her sometime in approximately September 2000, after the brouhaha surrounding her departure from Station KPFA(FM) had died down.<sup>12</sup> He told her that he had recommended her for the General Manager position at KALW(FM).<sup>13</sup> She described her state of mind at the time, noting that, having just gotten out of the KPFA(FM) situation, she was a little reluctant and wanted to learn more about the KALW(FM) job.<sup>14</sup> She volunteered that she had asked Mr. Helgeson “what’s going on at the station, is it in an uproar, what’s going on,” and that, based upon Mr. Helgeson’s assurances to her that everything was fine, she applied for the position.<sup>15</sup>

8. Ms. Sawaya recalled that, when she had not been offered the position after some time had passed, she called Mr. Helgeson to find out what was happening; she said did not want to risk giving notice to her then-current employer until she had received a firm offer from SFUSD.<sup>16</sup> Ms. Sawaya explained that she needed to work and have stability for her son, who had just moved back in with her to attend high school.<sup>17</sup> She described in detail the topics that she covered during a 20-minute interview with Ms. Jackie Wright, Executive Director of the Office of Public Engagement and Information for SFUSD.<sup>18</sup> Ms. Sawaya also explained that, during her series of interviews, no one with the School District – not Mr. Helgeson, Ms. Wright, or Dr. Arlene Ackerman, the

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employment ended because her contract was not renewed and she was given two hours to “get [her] things out” [Tr. 357, lines 2-8.].

<sup>12</sup> Tr. 361, lines 14-16.

<sup>13</sup> Tr. 361, lines 16-20.

<sup>14</sup> Tr. 361, lines 21-25.

<sup>15</sup> Tr. 361, lines 21-24; Tr. 361, line 23 – 362, lines 1-4.

<sup>16</sup> Tr. 363, lines 6-14.

<sup>17</sup> Tr. 363, lines 11-13.

<sup>18</sup> Tr. 364, lines 7-25; Tr. 365, lines 1-6.

Superintendent – had mentioned anything to her about the Golden Gate Public Radio pending license challenge.<sup>19</sup>

9. Ms. Sawaya also testified that she started her job as KALW(FM)'s General Manager on March 1, 2001, although she related that she did not really get her "feet on the ground" until the second week of March because, due to a prior commitment, she had taken three days off after she had started.<sup>20</sup> Ms. Sawaya testified that Mr. Helgeson advised her within "about two or three days after [she] had started work" that the station was facing a license challenge [the Petition to Deny filed by Golden Gate Public Radio].<sup>21</sup> In describing her reaction to that news at the deposition, she indicated shock,<sup>22</sup> and later volunteered that her heart was broken over the license challenge.<sup>23</sup>

10. When initially asked during her deposition whether she had seen SFUSD's LOI Response, Ms. Sawaya testified that she guessed that she had not seen it, although she really did not remember.<sup>24</sup> When asked specifically whether she was "aware that in March of 2001 that the FCC was inquiring or had wanted the information in response"<sup>25</sup> to question 1 of the LOI, Ms. Sawaya stated, "No. I really didn't start putting the pieces together probably until about mid-March . . . when I started to read through the files."<sup>26</sup> In response to whether she was asked by anyone to respond to questions 1, 2, 3, 4, or 5 of

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<sup>19</sup> Tr. 361, lines 23-25; Tr. 362, lines 1-3; Tr. 365, lines 24-25; Tr. 366, lines 1-6, 13-17; Tr. 367, lines 1-15.

<sup>20</sup> Tr. 367, lines 18-20; Tr. 376, lines 10-13. Interestingly, in the cover memo she sent to Mr. Sanchez dated March 8, 2001, Ms. Sawaya states that March 8 was her "6<sup>th</sup> day on the job." See Memorandum from Nicole Sawaya to Ernest Sanchez, Esq., Re: Enclosures, dated March 8, 2001.

<sup>21</sup> Tr. 367, lines 21-25, Tr. 368, lines 1-3.

<sup>22</sup> Tr. 368, lines 4-6.

<sup>23</sup> Tr. 382, line 24.

<sup>24</sup> Tr. 368, lines 12-16.

<sup>25</sup> Tr. 368, line 25; Tr. 369, lines 1-3.

<sup>26</sup> Tr. 369, lines 4-7.



the LOI, Ms. Sawaya testified, without hesitation, “no” to each inquiry.<sup>27</sup> When later asked whether she knew if anyone at the radio station had been asked to respond to LOI questions 1, 3, 4, and 5, she replied that she did not know.<sup>28</sup> When asked whether she knew if anyone at the station had been asked to respond to question 2, she also replied “no.”<sup>29</sup>

11. After being presented with a copy of SFUSD’s response to the LOI Response, Ms. Sawaya acknowledged that she had, in fact, seen the letter in draft form.<sup>30</sup> In response to whether she had been asked to provide any information or comments relative to the LOI, however, she claimed that she could not remember, “other than that [she] had put a few things in motion” such as moving the public file into a locked cabinet in her office and inquiring as to how the station generated its quarterly issues/programs lists.<sup>31</sup> When asked again whether she had “any role, whatsoever, in providing substantive information that appears in the response,” Ms. Sawaya did not answer the question directly; instead, she replied that she had “wanted to talk to the station’s lawyer and find out what was going on.”<sup>32</sup> Ms. Repp, counsel for SFUSD, then interrupted Ms. Sawaya and advised her not to discuss the substance of her conversations with the attorney because of the attorney/client privilege.<sup>33</sup> Ms. Sawaya next recounted that she felt that she, Ms. Wright, and Dr. Ackerman needed to be briefed by SFUSD’s then-attorney.<sup>34</sup> Ms. Sawaya explained that she had wanted Mr. Sanchez, SFUSD’s then-counsel, to “get

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<sup>27</sup> Tr. 369, lines 8-10, 14-17, 21-23; Tr. 370, lines 2-4, 8-10.

<sup>28</sup> Tr. 369, lines 11-13, 24-25; Tr. 370, lines 1, 507, 14-17.

<sup>29</sup> Tr. 369, lines 18-20.

<sup>30</sup> Tr. 370, lines 18-23.

<sup>31</sup> Tr. 371, lines 1-12.

<sup>32</sup> Tr. 374, lines 13-19.

<sup>33</sup> Tr. 374, lines 20-25.

<sup>34</sup> Tr. 375, lines 3-5.

something happening with regard to the license challenge,” and that, when Mr. Sanchez promised to draft a response, she “never connected it to this [the LOI response].”<sup>35</sup> Ms. Sawaya claimed that she “was still trying to figure out how to use the copier” and that, given the complexities of the situation, she “didn’t want to come to any quick judgments, especially given the fact that some people were still at the station that were involved in this.”<sup>36</sup> Ms. Sawaya then stated that she did not recall discussing with Mr. Helgeson the contents of SFUSD’s response to the LOI’s Inquiry 1.<sup>37</sup>

12. When Ms. Sawaya was asked whether she would change anything about SFUSD’s response to Inquiry 1 regarding FCC ownership reports, based on what she currently knows about the situation, Ms. Sawaya responded obliquely “I’m not sure what I know now makes any difference, only in that what I do know is I think everybody had correct intent. . . . [W]hen I really drilled down some months later . . . I saw there were Ownership Reports in there for those years. . . . I didn’t look at everything, I just gave it a cursory look.”<sup>38</sup>

13. After Bureau counsel had explained to Ms. Sawaya that the reason the Commission was investigating an issue involving events that had occurred years ago was based on its concern that SFUSD had falsely certified its renewal application, she was again asked whether the “yes” response to Inquiry 1 was appropriate.<sup>39</sup> Ms. Sawaya failed to respond directly to this inquiry and instead blamed Golden Gate Public Radio (the petitioner to deny) for performing “little tricks,”<sup>40</sup> such as possibly removing things

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<sup>35</sup> Tr. 375, lines 8-16.

<sup>36</sup> Tr. 375, lines 16-21.

<sup>37</sup> Tr. 377, lines 24-25; Tr. 378, line 1.

<sup>38</sup> Tr. 378, lines 20-25; Tr. 379, lines 11-25.

<sup>39</sup> Tr. 380, lines 2-25; Tr. 381, lines 1-4.

<sup>40</sup> Tr. 381, lines 5-6.

from the station's files.<sup>41</sup> When Bureau counsel pointed out that the 1993 and 1995 ownership reports that SFUSD had provided to the Commission were dated in December 1997, Ms. Sawaya acknowledged that SFUSD's renewal application certification as to the public inspection file's completeness as of August 1, 1997, could not have been correct because the reports were signed four months after the certification.<sup>42</sup>

14. Ms. Sawaya was then asked to review SFUSD's response to LOI Inquiry 2 and to respond as to whether the licensee's affirmative response – namely, that all required issues lists had been in the public file on August 1, 1997 – was accurate.<sup>43</sup> Ms. Sawaya testified that she could not recall – she was “working on a lot of trust then.”<sup>44</sup> When asked whether, knowing what she knows now about the situation, all the required issues lists had been in the file as of August 1, 1997,<sup>45</sup> Ms. Sawaya replied that she “didn't know anything more than anybody else,” and then revised her response that she did not know.<sup>46</sup>

15. Later in the deposition, when Ms. Sawaya was asked whether SFUSD's references to “present management” in its Response to Inquiry 2 included her,<sup>47</sup> she volunteered that she was not asked directly whether the station's public file contained all required issues lists, but that she “would surmise” that she was included in that reference.<sup>48</sup> When Bureau counsel attempted to elicit a more straightforward response from Ms. Sawaya, she testified that she did not know whether or not “present

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<sup>41</sup> Tr. 382, lines 2-7.

<sup>42</sup> Tr. 385, lines 4-19.

<sup>43</sup> Tr. 378, lines 12-17.

<sup>44</sup> Tr. 378, lines 18-19.

<sup>45</sup> Tr. 388, lines 3-9.

<sup>46</sup> Tr. 388, lines 10-14.

<sup>47</sup> Tr. 389, lines 13-19.

<sup>48</sup> Tr. 389, lines 20-23.

management” was meant to include her.<sup>49</sup> When pressed as to whether “present management” included her, in light of the fact that she had not provided a declaration with SFUSD’s LOI Response, Ms. Sawaya did not respond audibly; instead, through nonverbal gestures, she expressed relief at not having provided anything in writing to support the licensee’s admittedly inaccurate response to the Commission.<sup>50</sup>

16. Contrary to SFUSD’s assertion in its Opposition that “Ms. Sawaya testified that she assumed the LOI response statement regarding the belief of ‘present management’ that the file was complete referred to Mr. Helgeson and herself,”<sup>51</sup> Ms. Sawaya denied having any role whatsoever in the factual assertions that appeared in the last paragraph of page 5 of SFUSD’s LOI Response.<sup>52</sup> Similarly, Ms. Sawaya maintained that the reference to “present management” in paragraph 2 of page 6 of the LOI Response referred to Mr. Helgeson, not her,<sup>53</sup> as did the reference in the third full paragraph of page 6 of the LOI Response.<sup>54</sup> Ms. Sawaya also disavowed being included in “present management” in the reference to same in paragraph 1 of page 7 of the LOI Response.<sup>55</sup>

### **DISCUSSION**

17. The Bureau submits that, contrary to SFUSD’s repeated contention in its Opposition, Ms. Sawaya’s deposition testimony appears to be anything but forthright. Webster’s New Collegiate Dictionary defines the word “forthright” as “going straight to the point without ambiguity or hesitation.”<sup>56</sup> A fair reading of her testimony recounted

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<sup>49</sup> Tr. 390, lines 2-5.

<sup>50</sup> Tr. 389, lines 24-25; Tr. 390, lines 6-8.

<sup>51</sup> Opposition at 2.

<sup>52</sup> Tr. 390, lines 16-25; Tr. 391, lines 1-6.

<sup>53</sup> Tr. 391, lines 7-20.

<sup>54</sup> Tr. 391, lines 21-25; Tr. 392, lines 1-10.

<sup>55</sup> Tr. 392, lines 11-16.

<sup>56</sup> Webster’s New Collegiate Dictionary, 1979.

above can only lead one to conclude that, during her deposition, Ms. Sawaya was often evasive and/or non-responsive. In response to the Bureau's specific questioning of her involvement in providing information for SFUSD's LOI Response, she repeatedly testified either that she did not recall, or flatly denied having had such involvement. Given Ms. Sawaya's detailed recollection of numerous events that immediately preceded and followed the commencement of her employment at Station KALW(FM), her disavowal of any memory of having participated in the preparation of the LOI Response or of having drafted the Sawaya Memorandum appears suspicious,<sup>57</sup> particularly in light of the fact that SFUSD's request for an extension of time to file its LOI Response was premised on its expressed desire to involve Ms. Sawaya in that process.<sup>58</sup> Her

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<sup>57</sup> Ms. Sawaya's present inability to even recall drafting the Sawaya Memorandum, or having any independent recollection of having taken the actions described therein, is similarly dubious. As she notes in her Declaration filed with the Opposition, Ms. Sawaya recalls talking to Ms. Jenkins about every other topic identified in the e-mails and billing records that SFUSD turned over on February 2, 2005 – to wit, the history of the renewal challenge and a trip to San Francisco that Ms. Jenkins and Mr. Sanchez had contemplated taking. She claims, however, to have no recollection of any substantive conversations with either Mr. Sanchez or his law partner, Susan Jenkins, regarding the LOI Response, notwithstanding billing records for such communications and e-mails among Ms. Sawaya and members of the Sanchez Law firm regarding SFUSD's LOI Response. The most that Ms. Sawaya will concede is that she probably wrote the Sawaya Memorandum, based on the fact that she found a copy of it on her computer and acknowledges that it is written in her style. Notably, she does not deny that the initials next to her name on the memos' "from" line are hers. One could reasonably infer that such selective "memory loss" is nothing more than a self-serving attempt by Ms. Sawaya to present her employer in the best possible light and thereby preserve her, or her colleague's, employment.

<sup>58</sup> SFUSD attempts to mitigate Ms. Sawaya's memory lapse regarding the Sawaya Memorandum by noting that former counsel failed to turn over that document to current counsel and to SFUSD until sometime in January 2005, despite SFUSD's July 2004 request for such documents. Opposition at 3-4. Had counsel turned over the Sawaya Memorandum prior to Ms. Sawaya's deposition, SFUSD contends that her testimony might have been "more precise." Opposition at 4; Declaration at ¶ 10. In response to SFUSD's attempt to shift the blame to prior counsel, the Bureau notes that Ms. Sawaya had saved a copy on her computer. Moreover, even if Ms. Sawaya had not reviewed a copy of her Memorandum prior to her September deposition, the *HDO's* mention of her

Memorandum to Mr. Sanchez advising that SFUSD could not respond that its public file was complete is dated two days after the date of his extension-request letter to the Commission, of which she received a copy. Moreover, the Bureau's repeated and direct questioning of her involvement in preparing responses to the LOI should have triggered Ms. Sawaya's memory as to her involvement, irrespective of whether former counsel provided her with a copy of the Sawaya Memorandum that she had drafted.<sup>59</sup> Indeed, the text of the Hearing Designation Order and the language of the issues designated therein should have placed Ms. Sawaya on clear notice that her involvement would be a central issue explored during her deposition.

18. As the Commission has noted previously, a substantial question of fact "is one that is fairly debatable or one that could very well be decided in favor of the petitioner" (or movant, in this case).<sup>60</sup> A material question of fact "is one that has legal significance or that affects the outcome of the litigation."<sup>61</sup> As evidenced by the Bureau's and SFUSD's diametric views as to whether Ms. Sawaya's testimony was candid, the issue is clearly in dispute. It is axiomatic that false statements made during the course of a hearing proceeding are, in and of themselves, legally significant.<sup>62</sup> The Bureau has established that a substantial and material question of fact exists as to the

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involvement in assisting the station in responding to the LOI should have jogged her memory as to her involvement.

<sup>59</sup> It appears that the Bureau's questioning in fact may have triggered such memories. As the record demonstrates, Ms. Sawaya's testimony was uncharacteristically vague and/or evasive when she was asked directly whether she had "any role whatsoever in providing substantive information that appears in the response." See notes 29 and 30 *supra*. In fact, counsel for SFUSD curtailed Ms. Sawaya's testimony by advising her to avoid responding directly. See note 31, *supra*.

<sup>60</sup> *Frank Digesu, Sr.*, Memorandum Opinion and Order, 7 FCC Rcd 5459, 5460, ¶ 14, n.5 (citation omitted) ("*Digesu*").

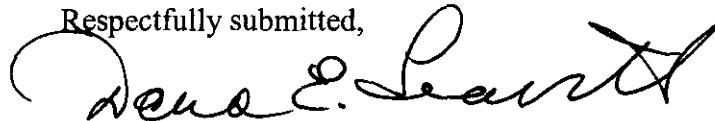
<sup>61</sup> *Id.* at n.6 (citation omitted).

candor and truth of Ms. Sawaya's deposition testimony. The appropriate method to determine whether her testimony and that of other SFUSD employees was truthful is to add the requested issue to the proceeding so that the Presiding ALJ can observe and evaluate witness credibility.<sup>63</sup>

### CONCLUSION

19. During the discovery process in this proceeding, SFUSD has not always cooperated fully with the Bureau to develop a complete factual record. More particularly, during depositions, SFUSD's witnesses exhibited questionable memory losses when inquiries focused on the condition of the Station KALW(FM) public inspection file at the time of the renewal application certification. Such testimony, when viewed against a deponent's written document reflecting gaps in the completeness of the public inspection file, raises serious questions as to that deponent's candor. Consequently, addition of the requested issue is warranted.

Respectfully submitted,



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March 16, 2005

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<sup>62</sup> See *Maria M. Ochoa*, Decision, 7 FCC Rcd 6569, 6571, ¶ 8 (Rev. Bd. 1992) (citations omitted) (subsequent history omitted).

<sup>63</sup> See *Digesu*, 7 FCC Rcd 5459, 5460, ¶ 16 (finding that an examination at hearing is the appropriate method to determine the credibility of an individual's prior testimony).

CERTIFICATE OF SERVICE

Dana E. Leavitt, Special Counsel in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 16th day of March, 2005, sent by first class United States mail, electronic mail (e-mail) and/or delivered by hand, copies of the foregoing "Enforcement Bureau's Reply to Opposition to Motion to Enlarge Issues" to:

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A handwritten signature in black ink, appearing to read "Dana E. Leavitt", written in a cursive style.

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Dana E. Leavitt



**ATTACHMENT**

**EXCERPTS FROM DEPOSITION OF NICOLE SAWAYA**

OCT 16 2004

FCC MAILROOM

# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:

SAN FRANCISCO UNIFIED  
SCHOOL DISTRICT

STATION KALM(FM)  
For Renewal of License

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INTERVIEW OF NICOLE SAWAYA

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## HERITAGE REPORTING CORPORATION

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1 that period, from March 2001 back to 1991?

2 A In 1991 I was still a journalist, I was an  
3 independent reporter in Public Radio. I worked out of the  
4 other Public Radio Station here in the city, KQED FM. I was  
5 also doing television work for them as well, on camera work.  
6 And I was a stringer for National Public Radio, NPR, and  
7 Monitor Radio at CAL NET, which was a California news  
8 service, defunct now. And I was also in the process of  
9 getting my degree at college.

10 Q Okay. So, now did that situation basically go on  
11 from 1991 to 2001?

12 A No. In 1993 I graduated, in January of 1993, and  
13 in April of 1993 I landed a job up in Filo, California, in  
14 Mendocino County, at a radio station, Public Radio Station  
15 KZYX, and I landed a part time job as Program Director. I  
16 then morphed into Station Manager towards the end, and I  
17 left KZYX December of 1995, and I had been recruited by  
18 National Public Radio to go out and work there, and decided  
19 to leave California. And I started at NPR, I believe it was  
20 January 17, 1996.

21 Q So, that brought you to the Washington D.C. area?

22 A Exactly right.

23 Q And you stayed there for how long?

24 A Almost two years to the day. I left, my last day  
25 was like December 20, 1997.

1 that period, from March 2001 back to 1991?

2 A In 1991 I was still a journalist, I was an  
3 independent reporter in Public Radio. I worked out of the  
4 other Public Radio Station here in the city, KQED FM. I was  
5 also doing television work for them as well, on camera work.  
6 And I was a stringer for National Public Radio, NPR, and  
7 Monitor Radio at CAL NET, which was a California news  
8 service, defunct now. And I was also in the process of  
9 getting my degree at college.

0 Q Okay. So, now did that situation basically go on  
1 from 1991 to 2001?

2 A No. In 1993 I graduated, in January of 1993, and  
3 in April of 1993 I landed a job up in Filo, California, in  
4 Mendocino County, at a radio station, Public Radio Station  
5 KZYX, and I landed a part time job as Program Director. I  
6 then morphed into Station Manager towards the end, and I  
7 left KZYX December of 1995, and I had been recruited by  
8 National Public Radio to go out and work there, and decided  
9 to leave California. And I started at NPR, I believe it was  
0 January 17, 1996.

1 Q So, that brought you to the Washington D.C. area?

2 A Exactly right.

3 Q And you stayed there for how long?

4 A Almost two years to the day. I left, my last day  
5 was like December 20, 1997.

1 Q And you went from there to where?

2 A I had been recruited for several months, offered a  
3 job at KPFA, which is the flagship station in Berkeley  
4 California, as General Manager. And I took the reins, I  
5 think it was like the second week in January of 1998.

6 Q And you stayed there until when?

7 A Until March 30, 1999 when my contract was not  
8 renewed and I was given two hours to get my things out.

9 Q Welcome to the wonderful world of corporations,  
10 even non-profit ones.

11 A You're probably familiar with Pacifica.

12 Q My son loves it. I have a 23 year old son who  
13 loves it.

14 A WPFW.

15 Q Whatever he can listen to. So, what happened  
after that?

7 A After that I weathered the storm that ensued,  
8 trying to dodge the spotlight because I felt it wasn't about  
9 me. And I then worked at an organization called Pacific  
10 News Service, based here in San Francisco. And the have  
11 another project, they have two projects under them, one is  
12 YO, Youth Outlook, and I was one of the editors for Your  
13 Outlook, which is a magazine. And then they were also in  
14 the middle stages of forming an organization called New  
15 California Media, which is a consortium of about 400 to 800

1 ethnic language news organizations in California. So, I was  
2 brought on board as kind of a media consultant to help  
3 strategize unrolling a broader campaign to incorporate  
4 Southern California and the ethnic press in Central Valley.

5 Q And did that bring us up to March of 2001?

6 A It certainly does.

7 Q Okay. Now, you had mentioned that there was a  
8 period, and I think from a timing standpoint it would have  
9 been 1994-1995, in that range, I believe you had mentioned  
10 that you had become a Station Manager or General Manager at  
11 one of the stations?

12 A At KZYX, yes, in Mendocino.

13 Q And for what period of time were you the Station  
14 Manager or General Manager?

15 A The last six months of my tenure there.

16 Q That was a Public Radio Station, correct?

17 A Exactly right, yeah.

18 Q Now, at the time that you were the General Manager  
19 or Station Manager, I'm assuming from that title that you  
20 were the person in charge of running the operations of the  
21 radio station?

22 A Pretty much. We had gone from, when I became  
23 Program Director, the General Manager was kind of run out of  
24 town, they were eating General Managers and spitting them  
25 out one right after another. So, I proposed to the board,

1 it's a community licensee so it had a very hands on  
2 governance structure, very active community board, and I  
3 proposed to them why not do a flat top management, and that  
4 way the General Manager wouldn't be so targeted and instead  
5 all the people with all their beefs could go to three people  
6 as opposed to just one. And I felt that that would diffuse  
7 the situation politically, which it did. And then  
8 eventually the flat top didn't quite work out, the finance  
9 person really didn't want to be there, the pay was too low,  
10 so they just said, look, just be Station Manager, would you.  
11 And I go, okay. But, at that point things were pretty  
12 stabilized so I didn't feel so targeted.

13 Q In the course of being the General Manager of that  
14 radio station, did you have any responsibility for preparing  
15 documents that would go into the H Public File?

16 A The licensee took care of Ownership Reports, the  
17 engineer took care of any of the contour maps that might  
18 have changed. We were also in the process of bringing on a  
19 repeater station, KZYZ. I had gotten a PTFP grant for that.  
20 And what I was mostly responsible for were the Issues  
21 Programs List. So, it was an NPR member station, we would  
22 pull the NPR stuff. Well, at that time NPR's website was  
23 just being birthed, so there were other ways they got that  
24 to us, they faxed it out or they sent it in a packet. And  
25 we had a lot of local programming, a lot of it

1 controversial. So, I tried to really focus on what was the  
2 most controversial at that time, which was around the  
3 environment. We had Redwood Summer going on, there was a  
4 real tussle between loggers and people that wanted to save  
5 the trees. So, that's really what I focused on with regards  
6 to keeping track of all our public affairs programs.

7 Q In that position, did you physically prepare then  
8 the Issues Programs List that would have covered the period  
9 when you were the General Manager?

10 A I brought in from producers their run sheets and  
11 from that I would cull together who, what, how, when, where,  
12 topic, well, what is pretty much topic so, we didn't need  
13 the why, we knew why. Yes.

14 Q And then you would --

15 A And I put that in the file drawer where the Public  
16 File lived. The board took care of the rest of the Public  
17 File.

18 Q Right. But, in terms of the Issues Programs List  
19 that was a document that you actually prepared on behalf of  
20 the station?

21 A Once again, pulling together the producer's stuff,  
22 yes. I didn't put it into one single document, I pulled it  
23 together, these are our programs --

24 Q Okay. If one could gleam the information that --

25 A Exactly --



1 Q -- the station required from looking at several  
2 documents but they were related and all in the same place?

3 A Exactly.

4 Q Now, when you became -- oh, let me ask another  
5 related question to something you had mentioned. You had  
6 said that, I think it was somewhere in the early nineties  
7 you graduated from college?

8 A Uh-hum.

9 Q What was your degree?

10 A Bachelor of Arts, Communication Arts at San  
11 Francisco State University, Radio and Television.

12 Q Okay. Now, when you became -- could you tell us  
13 how it was that you became General Manager of KALW?

14 A At the time I was working for Pacific News Service  
15 and the KPFA brew ha ha was starting to die down, my name  
16 wasn't in the paper so much. And I actually received a call  
17 from Bill Helgeson, who I had met years ago when I worked  
18 for NPR, because I made a station visit to KALW. And Bill  
19 said, I've called around to a couple of people, they all  
20 recommend you, we have this job opening, would you consider  
21 applying. And I said, let's meet for coffee and talk about  
22 it, I'm a little reluctant, having just got out of the KPFA  
23 thing. So, that was it. We met for coffee, Bill told me  
24 about where I would find the job application, it was online  
25 at the time for SFUSD, they had posted it. And I said